

VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

CHAPTER 1021

An Act to amend and reenact §§ 15.1-1273 and 15.1-1274 of the Code of Virginia and to amend the Code of Virginia by adding in Title 15.1 a chapter numbered 44, consisting of sections numbered 15.1-1688 through 15.1-1705, relating to the Public Recreational Facilities Authorities Act and the Hampton Roads Sports Facility Authority.

[H 1234]

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1273 and 15.1-1274 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 15.1 a chapter numbered 44, consisting of sections numbered 15.1-1688 through 15.1-1705, as follows:

§ 15.1-1273. Creation of authorities.

(a) The governing body of a political subdivision may by ordinance or resolution, or the governing bodies of two or more political subdivisions, may by concurrent ordinances or resolutions, signify their intention to adopt an ordinance or resolution to create an authority under an appropriate name and title containing the word "authority." The governing body of each participating political subdivision shall hold a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than ten days prior to the date fixed for such hearing, in a newspaper having a general circulation in such political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. The governing body of any such political subdivision may at its discretion by resolution call for a referendum in such political subdivision on the question of the creation of an authority, which shall be held as provided by § 24.1-165. When a referendum is to be held in more than one political subdivision, the referendum shall be held on the same date in all of such political subdivisions.

(b) The articles of incorporation shall set forth:

- (1) The name of the authority and address of its principal office.
- (2) A statement that the authority is created under this chapter.
- (3) The name of each participating political subdivision.
- (4) The names, addresses and terms of office of the first members of the authority.
- (5) The purpose or purposes for which the authority is to be created.

(c) Passage of such ordinance or resolution by the governing body or governing bodies shall constitute the authority a public body politic and corporate of the Commonwealth.

(d) Any political subdivision may become a member of an existing authority, and any political subdivision which is a member of an existing authority may withdraw therefrom, but no political subdivision shall be permitted to withdraw from any authority after an obligation has been incurred by the authority.

(e) *Having specified the initial purpose or purposes of the authority in the articles of incorporation, the governing bodies of the participating political subdivisions may, from time to time by subsequent ordinance or resolution, after public hearing, modify the articles of incorporation and the purpose or purposes specified therein. Such modification may be made either with or without a referendum.*

§ 15.1-1274. Commission to exercise powers of authority.

The powers of each authority created hereunder shall be exercised by a commission which shall consist of not less than five nor more than seventeen members who shall be appointed by the governing bodies of the participating political subdivisions and who shall be selected in the manner and for the terms provided by the ordinance or resolution creating the authority. Officers and employees of the participating political subdivisions may be appointed to the commission and may constitute a majority of the members of the commission.

The members of the commission shall elect one of their number chairman and shall elect a secretary and a treasurer who need not be members of the commission. The offices of secretary and treasurer may be combined. A majority of the members of the commission shall constitute a quorum and the vote of a majority of such members shall be necessary for any action taken by the authority. No vacancy in the membership of the commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. The members of the commission shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The governing bodies of the participating political subdivisions may provide for compensation of the members of the commission; provided no compensation shall be paid for meetings not attended.

Alternate members of the commission may also be selected. Such alternates shall be selected in the

same manner as the members. The term of each alternate shall be the same as the term of the member for whom each serves as an alternate; however, the alternate's term shall not expire because of the member's death, disqualification, resignation or termination of employment with the member's political subdivision. If a member is not present at a meeting of the authority, the alternate for the member shall have all the voting and other rights of a member and shall be counted for purposes of determining a quorum at any meeting of the authority.

CHAPTER 44.

HAMPTON ROADS SPORTS FACILITY AUTHORITY.

§ 15.1-1688. Definitions.

As used in this chapter the following words have the meanings indicated:

"Authority" means the Hampton Roads Sports Facility Authority.

"Facility" means (i) stadium or arena for major league professional sports teams, except major league baseball, (ii) practice fields or other areas where sports teams may practice or perform, (iii) offices for sports teams or franchises, (iv) office, restaurant, concessions, retail and lodging facilities which are owned and operated in connection with a sports stadium or other structure, and (v) any other directly related properties including, but not limited to, onsite and offsite parking lots, garages, and other properties.

"Sports franchise" means the contractual right granted to any person or persons to own or operate a sports team in a specified location.

"Sales tax revenues" means taxes collected under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.), as limited herein. Sales tax revenues shall not include any local general retail sales and use tax levied pursuant to §§ 58.1-605 and 58.1-606.

"Stadium" means a stadium or arena constructed for the purpose of the conduct of games by a team which is a part of the National Basketball Association or the National Hockey League.

§ 15.1-1689. Creation of Authority.

There is hereby established a body corporate and politic known as the Hampton Roads Sports Facility Authority. The Authority is a political subdivision of the Commonwealth.

§ 15.1-1690. Members of Authority; chairman; terms.

A. The Authority shall consist of fifteen members appointed by the Governor and subject to confirmation by the General Assembly. The Governor shall consider recommendations from each locality in Planning District 23 before making such appointments. The members of the Authority annually shall elect a chairman and a vice-chairman from their membership; the vice-chairman shall perform the duties of the chairman in his absence.

B. The term of a member of the Authority is four years. However, upon the initial appointment of the members of the Authority, the terms of the members shall be staggered as follows: the initial term of five of the members shall be four years; the initial term of five members shall be three years; and the initial term of the remaining five members shall be two years. The Governor shall designate the initial term to be served by each appointee.

At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. The members of the Authority shall receive no compensation for their services, but a member may be reimbursed by the Authority for reasonable expenses actually incurred in the performance of the duties of that office.

§ 15.1-1691. Quorum; actions of Authority; meetings.

Eight members of the Authority shall constitute a quorum for the purpose of conducting business. Actions of the Authority must receive the affirmative vote of a majority of the quorum. No vacancy on the Authority shall impair the right of a quorum to exercise all rights and perform all the duties of the Authority. The Authority shall determine the times and places of its regular meetings. Special meetings of the Authority shall be held when requested by two or more members of the Authority. Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. A reasonable effort shall be made to provide each member with notice of any special meeting. No matter not specified in the notice shall be considered at such special meeting unless all the members of the Authority are present.

§ 15.1-1692. Executive Director appointment; duties.

A. The Authority shall appoint an Executive Director, who is the chief administrative officer and secretary of the Authority and serves at the pleasure of the Authority. The Executive Director shall be paid from funds received by the Authority. No state funds shall be used to pay the salary or the expenses of this office.

B. In addition to any other duties set forth in this chapter, the Executive Director shall:

1. Direct and supervise the administrative affairs and activities of the Authority in accordance with its rules, regulations, and policies;
2. Attend all meetings and keep minutes of all proceedings;
3. Approve all accounts for salaries, per diem payments, and allowable expenses of the Authority and its employees and consultants and approve all expenses incidental to the operation of the Authority;

4. Report and make recommendations to the Authority on the merits and status of any proposed facility; and

5. Perform any other duty that the Authority requires for carrying out the provisions of this chapter.

§ 15.1-1693. Powers.

In addition to the powers set forth elsewhere in this chapter, the Authority may:

1. Adopt and alter an official seal;

2. Sue and be sued in its own name;

3. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;

4. Maintain an office at such place as the Authority may designate;

5. Employ, either as regular employees or independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the Authority, and fix their compensation;

6. Determine the locations of, develop, establish, construct, erect, acquire, own, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary to accomplish the purposes of the Authority;

7. Acquire, hold, lease, use, encumber, transfer, or dispose of real and personal property;

8. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the Authority;

9. Regulate the use and operation of facilities developed under the provisions of this chapter;

10. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;

11. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest, and to mortgage, pledge, or otherwise encumber the property or funds of the Authority and to contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;

12. Issue bonds under this chapter;

13. Receive and accept from any source, private or public, contributions, gifts, or grants of money or property; and

14. Do all things necessary or convenient to carry out the powers granted by this chapter.

§ 15.1-1694. Public hearings; notice; reports.

A. At least sixty days prior to selecting a facility site, the Authority shall hold a public hearing within thirty miles of the site proposed to be acquired for the purpose of soliciting public comment.

B. Except as otherwise provided herein, at least sixty days prior to the public hearing required by this section, the Authority shall notify the local governing body in which the facility is proposed to be located and advertise the notice in a newspaper of general circulation in that locality. The notice shall include: (i) a description of the site proposed to be acquired, (ii) the intended use of the site, and (iii) the date, time, and location of the public hearing. After receipt of the notice required by this section, the local governing body in which a facility is proposed to be located may require that this period be extended for up to sixty additional days or for such other time period as agreed upon by the local governing body and the Authority.

C. At least thirty days before acquiring or entering into a lease involving a facility site and before entering into a construction contract involving a new facility or facility site, the Authority shall submit a detailed written report and findings of the Authority that justify the proposed acquisition, lease, or contract to the General Assembly. The report and findings shall include a detailed plan of the method of funding and the economic necessity of the proposed acquisition, lease, or contract.

D. The time periods in subsections A, B, and C of this section may not run concurrently.

§ 15.1-1695. Acquisition of property.

A. The Authority may acquire in its own name, by gift or purchase, any real or personal property, or interests in property, necessary or convenient to construct or operate any facility.

B. In any jurisdiction where planning, zoning, and development regulations may apply, the Authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

§ 15.1-1696. Bond issues.

A. The Authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this chapter the term "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the Authority, including, but not limited to:

1. Taxes, fees, charges, or other revenues payable to the Authority;

2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;

3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and

4. *Proceeds of refunding bonds.*

C. Bonds shall be authorized by resolution of the Authority and may be secured by a trust agreement by and between the Authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding forty years from their respective dates of issue;

2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;

3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;

4. Be payable in lawful money of the United States at a designated place;

5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;

6. Be executed by the manual or facsimile signatures of the officers of the Authority designated by the Authority which signatures shall be valid at delivery even for one who has ceased to hold office; and

7. Be sold in the manner and upon the terms determined by the Authority including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions which shall be a part of the contract with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the Authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;

2. The setting aside of loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;

3. Limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;

4. Limitations on the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;

5. The refunding or refinancing of outstanding bonds;

6. The procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;

7. Defining the acts or omissions which shall constitute a default in the duties of the Authority to bondholders and providing the rights or remedies of such holders in the event of a default which may include provisions restricting individual right of action by bondholders;

8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of bondholders; and

9. Any other matter relating to the bonds which the Authority determines appropriate.

E. No member of the Authority nor any person executing the bonds on behalf of the Authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.

F. The Authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of, or as security for, its bonds.

G. A pledge by the Authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or otherwise against the Authority, irrespective of whether the person has notice.

No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by the Authority need be filed or recorded in any public record other than the records of the Authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or public local law.

H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.

I. The Authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public

purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.

J. The franchise holder must agree that the franchise will not be relocated until any bonds issued hereunder are defeased.

K. In the event a facility is planned, no bonds shall be issued hereunder until the Authority has executed a long-term lease with a person or persons who hold a sports franchise from the National Basketball Association or the National Hockey League.

§ 15.1-1697. Investments in bonds.

Any financial institution, investment company, insurance company or association, and any personal representative, guardian, trustee, or other fiduciary, may legally invest any moneys belonging to them or within their control in any bonds issued by the Authority.

§ 15.1-1698. Bonds are tax exempt.

The Authority shall not be required to pay any taxes or assessments of any kind whatsoever and its bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this Commonwealth or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

§ 15.1-1699. Sports Facility Authority Financing Fund; use.

A. There is hereby created a Hampton Roads Sports Facility Authority Financing Fund ("Fund"). The Authority shall use the Fund as a nonlapsing revolving fund for carrying out the provisions of this chapter.

B. All of the following receipts of the Authority shall be placed in the Fund: (i) proceeds from the sale of bonds, (ii) revenues collected or received from any source under the provisions of this chapter, and (iii) any other revenues under the jurisdiction of the Authority.

C. The Authority shall pay all expenses and make all expenditures from the Fund. To the extent deemed appropriate by the Authority, the receipts of the Fund shall be pledged to and charged with the payment of debt service on Authority bonds and all reasonable charges and expenses related to Authority borrowing and the management of Authority obligation.

§ 15.1-1700. Additional duties.

In addition to the duties set forth elsewhere in this chapter, the Authority shall:

- 1. Keep records as are consistent with sound business practices and accounting records using generally accepted accounting practices;*
- 2. Cause an audit by an independent certified public accountant to be made of accounts and transactions at the conclusion of each fiscal year;*
- 3. Be subject to audit and examination at any reasonable time of its accounts and transactions by the Auditor of Public Accounts; and*
- 4. Submit a detailed annual report of its activities and financial standing to the Governor and to the General Assembly.*

§ 15.1-1701. Creation of local advisory boards.

Prior to constructing any facility, the Authority shall create a local advisory board for that facility. Each local advisory board shall be composed of twelve members. Six members shall be appointed by the local governing body in which the proposed facility is to be located. Notwithstanding the provisions of § 15.1-50.4, the governing body may appoint one or more of its members to serve on the local advisory board. Six members shall be appointed by the Authority, and each of those six members shall reside in the county or city in which the facility is proposed to be located. All advisory board members shall be appointed for a term of four years. All advisory board members shall serve without pay, but a member may be reimbursed by the Authority for reasonable expenses actually incurred in the performance of advisory functions. Each advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The Authority shall give each local advisory board reasonable opportunity to provide appropriate comments and recommendations on the design and the operation of the facility in its locality.

§ 15.1-1702. Entitlement to sales tax revenues derived from a stadium.

A. If the Authority has issued bonds to finance or refinance a stadium, the Authority shall be entitled to all sales tax revenues that are generated by transactions taking place upon the premises of the stadium. Such entitlement shall continue for the lifetime of such bonds, but that entitlement shall not exceed thirty years. All sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the Authority on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues generated by transactions taking place upon the premises of the stadium. The State Comptroller shall make such remittances to the Authority, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

B. If the Authority has issued bonds to finance or refinance a stadium, the local governing body of the county or city in which the stadium is located may direct, by ordinance or resolution, that all local

sales and use tax revenues generated by transactions taking place upon the premises of the stadium from taxes levied pursuant to §§ 58.1-605 and 58.1-606 shall be remitted by the State Comptroller to the Authority for the repayment of bonds. Such remittances shall be for the same period and under the same conditions as remittances to the Authority paid in accordance with subsection A, mutatis mutandis.

§ 15.1-1703. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this chapter shall be made only from sales tax revenues generated from transactions taking place upon the premises of the stadium for which bonds may have been issued to pay the cost, in whole or in part.

§ 15.1-1704. Cooperation between the Authority and other political subdivisions.

The Authority may enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § 15.1-21.

§ 15.1-1705. Tort liability.

No pecuniary liability of any kind shall be imposed on the Commonwealth or on any other political subdivision of the Commonwealth because of any act, agreement, contract, tort, malfeasance or nonfeasance by or on the part of the Authority, its agents, servants or employees.